

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WAVERLY N. WHITE,

Petitioner,

v.

Civ. Act. No. 05-14-SLR

THOMAS CARROLL,
Warden, and **M. JANE BRADY,**
Attorney General of the State of
Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Waverly N. White, has applied for federal habeas relief, challenging his April 2002 conviction in Delaware Superior Court for first degree robbery, third degree assault, and possession of drug paraphernalia. D.I. 1. By the terms of the Court's order of April 11, 2005, the answer is due to be filed on May 13, 2005.

2. The petitioner has submitted a 72-page petition with 15 claims for relief. Due to the length and complexity of the petition, counsel for respondents has been unable to complete the answer. Further, co-counsel assigned to this case is out of the office for a week on a previously scheduled vacation and the chief of the appeals division has recently also been out of the office for several days. In addition, counsel have been, and continue to be, working on other cases before this Court and the state courts. In light of the situation, additional time is needed to complete the answer

and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case. The petitioner will not be prejudiced by this request.

5. Respondents submit that an extension of time to and including June 3, 2005 in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: May 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2005, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on May 10, 2005, I have mailed by United States Service, the above-listed documents to the following non-registered participant:

Waverly N. White
SBI No. 166563
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
Deputy Attorney General
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